

FEB 07 2003

Dept. of Commerce & Insurance
Assistant Commissioner
Insurance Division

Notice
of Rulemaking Hearing
Department of Commerce and Insurance
Division of Insurance

There will be a hearing before the Commissioner of Commerce and Insurance to consider the promulgation of rules pursuant to Tenn. Code Ann. § 56-26-204(a). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in Room 160 of the Davy Crockett Tower located at 500 James Robertson Parkway in Nashville, Tennessee at 10:00 a.m. CST on the 18th day of March, 2003.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Commerce and Insurance to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with Verna Norris, the Department's ADA Coordinator, at 500 James Robertson Parkway, 5th Floor, Nashville, Tennessee 37243 (615) 741-0481.

For a copy of this notice of rulemaking hearing, contact:, Staff Attorney, Department of Commerce and Insurance, 25th Floor, Tennessee Tower, 312 Eighth Avenue North. Nashville, TN 37243, telephone (615) 741-2199.

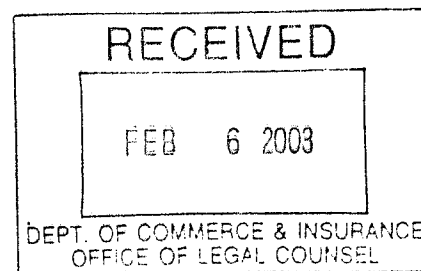
Substance of Proposed Rules

Chapter 0780-1-76

Self-Insuring Associations and Non-Profit Business Coalitions for Health

New Rules
Table of Contents

- 0780-1-76-.01 Purpose and Scope
- 0780-1-76-.02 Definitions
- 0780-1-76-.03 Certificate of Authority Required
- 0780-1-76-.04 Authority to Act as a Self-Funded Qualified Multiple Employer Welfare Arrangement
- 0780-1-76-.05 Application for a Certificate of Authority
- 0780-1-76-.06 Minimum Surplus
- 0780-1-76-.07 Investments
- 0780-1-76-.08 Contribution Rates
- 0780-1-76-.09 Reporting Requirements
- 0780-1-76-.10 Consumer Information Notice
- 0780-1-76-.11 Examinations and Investigations
- 0780-1-76-.12 Licensing of Agents
- 0780-1-76-.13 Taxes
- 0780-1-76-.14 Misrepresentation Prohibited
- 0780-1-76-.15 Prohibited Use of Certain Names
- 0780-1-76-.16 Applicability of Other Provisions
- 0780-1-76-.17 Exemptions
- 0780-1-76-.18 Cease and Desist Orders
- 0780-1-76-.19 Penalties
- 0780-1-76-.20 Applicability of the Insurers Rehabilitation and Liquidation Act



Rule 0780-1-76-.01 Purpose and Scope.

The purpose of this Chapter is to regulate the offering of health benefits by employers of the same trade or professional association and non-profit business coalitions for health that choose to self-insure. The provisions of this Chapter shall apply to self-insured qualified multiple employer welfare arrangements that are established or maintained in the State of Tennessee.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.02 Definitions.

- (1) "Allowable Benefit" means a benefit to provide medical, surgical, or hospital care or benefits.
- (2) "Claims Liability" means the total of all incurred claims for allowable benefits under a self-funded qualified multiple employer welfare arrangement that is not reimbursed or reimbursable by stop-loss insurance, subrogation, or other sources.
- (3) "Commissioner" means the Commissioner of Commerce and Insurance.
- (4) "Health Benefit Plan" or "Plan" means a policy, contract, certificate or agreement offered by a multiple employer welfare arrangement for or to reimburse any of the costs of health care services. "Health benefit plan" includes accident only, credit health, dental, vision, Medicare supplement, or long-term care coverage issued as a supplement to liability insurance; automobile medical payment insurance; short-term and catastrophic health insurance policies; and a policy that pays on a cost-incurred basis. "Health benefit plan" does not include worker's compensation or similar insurance.
- (5) "Multiple Employer Welfare Arrangement" has the meaning given in 29 U.S.C. 1002.
- (6) "Person" means any natural or artificial person including, but not limited to, an individual, partnership, association, trust, or corporation.
- (7) "Qualified Actuary" means an individual who;
 - (a) Is a member in good standing of the American Academy of Actuaries;
 - (b) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;
 - (c) Is familiar with the valuation requirements applicable to life and health insurance companies; and
 - (d) Has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have:
 - (i) Violated any provision of, or any obligation imposed by, the Insurance Law or other law in the course of his or her dealings as a qualified actuary; or

- (ii) Been found guilty of fraudulent or dishonest practices; or
 - (iii) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as a qualified actuary; or
 - (iv) Submitted to the Commissioner during the past five (5) years an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provision of this chapter including standards set by the Actuarial Standards Board; or
 - (v) Resigned or been removed as an actuary within the past five (5) years as a result of failure to adhere to generally acceptable actuarial standards; and
- (8) “Qualified Multiple Employer Welfare Arrangement” is a multiple employer welfare arrangement that also meets the conditions of either subparagraph (a) or (b) below:
- (a) Consists of ten (10) or more employers of the same trade or professional association that:
 - (i) Has been actively in existence for at least five (5) years;
 - (ii) Has been formed and maintained in good faith for purposes other than obtaining insurance;
 - (iii) Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee); and
 - (iv) Does not make health insurance coverage offered through the association available other than in connection with a member of the association; or
 - (b) Consists of ten (10) or more employers of the same non-profit business coalition for health that:
 - (i) Has been actively in existence for at least five (5) years;
 - (ii) Has been formed and maintained in good faith for purposes other than obtaining insurance;
 - (iii) Does not condition membership in the coalition on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee); and
 - (iv) Does not make health insurance coverage offered through the coalition available other than in connection with a member of the coalition.
- (9) “Self-funded Qualified Multiple Employer Welfare Arrangement” or “Arrangement” means a qualified multiple employer welfare arrangement that does not provide for payment of benefits solely through a policy of insurance issued by one or more authorized insurance companies.

- (10) “Surplus” means the excess of assets of a self-funded qualified multiple employer welfare arrangement minus the liabilities of the arrangement.
- (11) “Tennessee Insurance Law” means Tenn. Code Ann. §§ 56-1-101, *et seq.*, as well as any rules promulgated thereunder.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.03 Certificate of Authority Required.

- (1) A person may not establish or maintain a self-funded qualified multiple employer welfare arrangement in this State without a certificate of authority issued to the arrangement by the Commissioner.
- (2) A self-funded qualified multiple employer welfare arrangement is deemed established or maintained in this State if:
 - (a) One (1) or more of the employer members participating in the arrangement is domiciled or maintains its principal place of business in this State;
 - (b) The arrangement solicits an employer that is domiciled in this state or has its principal headquarters or principal administrative offices in this state; or
 - (c) The arrangement is principally located in this state.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.04 Authority to Act as a Self-Funded Qualified Multiple Employer Welfare Arrangement.

- (1) The Commissioner may not issue a certificate of authority to a self-funded qualified multiple employer welfare arrangement unless the arrangement establishes to the satisfaction of the Commissioner that:
 - (a) Employers participating in the arrangement are members of either the same trade or professional association or a non-profit coalition for health;
 - (b) Employers or employees participating in the arrangement exercise direct control over the arrangement;
 - (i) Direct control exists if the employer or employees participating in the arrangement have the right to elect at least seventy-five percent (75%) of the individuals designated in the arrangement’s organizational documents as having control over the operations of the arrangement and the individuals designated in the arrangement’s organizational documents in fact exercise control over the operation of the arrangement;
 - (ii) Use of a third-party administrator to process claims and to assist in the administration of the arrangement is not evidence of the lack of exercise of control over the operations of the arrangement;

- (c) The arrangement provides only allowable benefits;
 - (d) The arrangement has adequate facilities and competent personnel, as determined by the Commissioner, to service the health benefit plan or has contracted with an administrator licensed or exempt for licensure under Title 56, Chapter 6, Part 8, to service the health benefit plan;
 - (e) The arrangement does not solicit participation in the arrangement from the general public, except the arrangement may employ or independently contract with a licensed insurance producer who may be paid a commission or other remuneration to enroll employers in the arrangement;
 - (f) The arrangement is not organized or maintained solely as a conduit for the collection of premiums and the forwarding of premiums to an insurance company;
 - (g) The arrangement has deposited with the Commissioner a bond in an amount to be determined by the Commissioner, to be used for the payment of claims in the event the arrangement becomes insolvent and has submitted to the Commissioner a written plan of operation that, in the discretion of the Commissioner, ensures the financial integrity of the arrangement;
 - (h) The arrangement is not in a hazardous financial condition;
 - (i) In determining whether an arrangement is in a hazardous financial condition, the Commissioner may consider the following:
 - (A) The financial statements of the arrangement or any employer participating in the arrangement;
 - (B) Types and levels of stop-loss insurance coverage, including attachment points of the coverage;
 - (C) Whether a deposit is required for each employee covered under the arrangement equal to at least one month's cost of providing benefits under the arrangement;
 - (D) The experience of the individuals who will be involved in the management of the arrangement, including employees, independent contractors, and consultants; and
 - (E) Other factors the Commissioner considers relevant to determining whether the arrangement is in a hazardous financial condition, including, but not limited to, those standards enumerated in Rule 0780-1-66-.03.
- (2) The Commissioner may require that the articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement require that

employers participating in the arrangement are liable for a pro rata share of all liabilities of the arrangement that are unpaid.

- (3) The arrangement shall maintain both specific and aggregate stop-loss insurance coverage covering one hundred percent (100%) of claims in excess of the attachment points recommended by a qualified actuary.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.05 Application for a Certificate of Authority.

- (1) To apply for a certificate of authority, an arrangement shall file with the Commissioner an application on a form adopted by the Commissioner, accompanied by a fee as set under Tenn. Code Ann. § 56-4-101(a)(1), showing its name, the location of its home office, its date of organization, its state of domicile, and additional information that the Commissioner may reasonably require in order to determine an arrangement's qualifications to obtain a certificate of authority hereunder.
- (2) The application shall be submitted together with:
 - (a) A copy of all articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement;
 - (b) A copy of each summary plan description of the arrangement filed or required to be filed with the United States Department of Labor, including any amendments to each description;
 - (c) Evidence of coverage of or letter of intent to participate executed by at least ten (10) employers providing allowable benefits;
 - (d) Financial statements for the preceding five (5) fiscal years or for such lesser period as such applicant shall have been in existence, and similar information covering the period from the end of such person's last fiscal year, if the information is available.
 - (i) The financial statements of the applicant shall be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with the National Association of Insurance Commissioners Accounting Practices and Procedures Manual.
 - (e) Proof that the arrangement maintains and will continue to maintain fidelity bonds required by the United States Department of Labor under 29 U.S.C. 1001-1461 (Employee Retirement Income Security Act of 1974);
 - (f) A copy of any stop-loss insurance policies maintained or proposed to be maintained by the arrangement;
 - (g) Biographical reports, on forms prescribed by the National Association of Insurance Commissioners, evidencing the general trustworthiness

and competence of each individual who is serving or who will serve as a managing employee or fiduciary of the arrangement;

- (h) A notarized statement executed by an officer of the arrangement certifying, to the best knowledge and belief of the officer, that the information provided in the application is true and correct and that the arrangement is in compliance with the requirements in
 - (i) 29 U.S.C. 1001-1461 (Employee Retirement Income Security Act of 1974) or a statement of any requirements with which the arrangement is not in compliance and a statement of proposed corrective action; and
 - (ii) Rule 0780-1-76-.06.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.06 Minimum Surplus.

A self-funded qualified multiple employer welfare arrangement shall establish and maintain surplus equal to the greater of the following:

- (1) Thirty percent (30%) of the unpaid claims liability of the arrangement; or
- (2) The amount recommended and certified by a qualified actuary.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.07 Investments.

A self-funded qualified multiple employer welfare arrangement shall maintain an amount at least equal to eighty-five percent (85%) of its net admitted assets on a statutory basis in the following:

- (1) Cash and cash equivalents;
- (2) The fully insured portion of a bank deposit when the insurance is provided by a solvent agency of the United States government or by collateral;
- (3) A certificate of deposit issued by a bank or other financial institution whose deposits qualify for Federal Deposit Insurance Corporation protection; provided, if the Commissioner determines that the amount of the certificate of deposit purchased by an insurer in any one bank is not a sound investment, the Commissioner may require the insurer to liquidate that portion found to be an unsound investment;
- (4) A share of savings account of a savings and loan or building and loan association, to the extent that an account is insured by the Federal Deposit Insurance Corporation; or
- (5) A rated credit instrument that is issued, assumed, guaranteed, or insured by the United States or Canada or by a government-sponsored enterprise of the United States or Canada if the instrument is assumed, guaranteed, or insured by the United States or Canada or is otherwise backed or supported by the full faith and credit of the United States or Canada.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.08 Contribution Rates.

- (1) A self-funded qualified multiple employer welfare arrangement shall establish and maintain contribution rates that fund the greater of:
 - (a) The amount recommended and certified by a qualified actuary in order for the self-funded qualified multiple employer welfare arrangement to remain financially solvent; or
 - (b) The sum of projected claims liability for the year, plus all projected costs of operation of the arrangement for the year, plus an amount equal to any deficiency in the surplus of the arrangement for all prior years, minus an amount equal to the surplus of the arrangement in excess of the minimum required level of surplus.
- (2) A self-funded qualified multiple employer welfare arrangement shall establish and maintain contribution rates that are not excessive, inadequate, or unfairly discriminatory.
- (3) A self-funded qualified multiple employer welfare arrangement shall, before use, file with the Commissioner:
 - (a) A rate or fee of any kind to be charged a participating employer or employee;
 - (b) Every rating manual, schedule, plan, rule, or formula; and
 - (c) Any modification to the rating manual, schedule, plan, rule or formula.
- (4) The Commissioner shall disapprove a contribution rate or fee submitted under paragraph (3) of this rule that does not meet the requirements of paragraphs (1) and (2) of this section or is in any respect not in compliance with or in violation of law.
- (5) A filing under paragraph (3) of this rule must state the effective date and must provide a comprehensive description of the coverage.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.09 Reporting Requirements.

- (1) A self-funded qualified multiple employer welfare arrangement shall file with the Commissioner on or before June 1 of each year on the National Association of Insurance Commissioner's annual health blank, a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31, including:
 - (a) A statement of financial condition accompanied by the certificate of an independent public accountant the effect that such statement presents fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with statutory accounting procedures.
 - (b) A statement of change in financial condition for the year accompanied by an actuarial opinion by a qualified actuary that includes:

- (i) A certification that the unpaid claim liability of the arrangement meets the requirements of Chapter 0780-1-69.
 - (ii) The recommended level of specific and aggregate stop-loss insurance the arrangement should maintain; and
 - (iii) A description of the actuarial soundness of the arrangement, including any recommended actions the arrangement should take to improve its actuarial soundness;
 - (c) A statement of the arrangement's contribution rates for the next year;
 - (d) A report showing the number of participating employers and number of covered lives at the end of the year and contributions received during the year in the state;
 - (e) Any information required by statute or rule relating to the arrangement's compliance with the requirements in Tenn. Code Ann. § 56-7-109; and
 - (f) Additional information the Commissioner determines is necessary in order to determine the financial integrity of the arrangement.
- (2) A self-funded qualified multiple employer welfare arrangement shall, within sixty (60) days after the end of each quarter, file with the Commissioner, on the National Association of Insurance Commissioner's quarterly health blank, a full and true statement of its financial condition, transactions, and affairs as of the preceding quarter, including
- (a) A statement of financial condition;
 - (b) A statement of change in financial condition for the period since the end of the prior year;
 - (c) A report showing the number of participating employers and number of covered lives at the end of the quarter and contributions received during the quarter in the state, and
 - (d) Additional information the Commissioner determines is necessary in order to determine the financial integrity of the arrangement.
- (3) A self-funded qualified multiple employer welfare arrangement shall file with the Commissioner a copy of the arrangement's Internal Revenue Service Form 5500, including all attachments to the form.
- (4) A self-funded qualified multiple employer welfare arrangement shall, before execution, file with the Commissioner a copy of any stop-loss or excess policies or agreements maintained or proposed to be maintained by the arrangement. The arrangement shall verify with the Commissioner that all such policies or agreements have been filed and approved by the Commissioner.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.10 Consumer Information Notice.

A self-funded qualified multiple employer welfare arrangement must provide a written notice to each participating employee at the time that coverage becomes effective. The notice must state the following in a clear and conspicuous manner, and in at least ten (10) point type:

- (1) The health coverage is issued by a self-funded qualified multiple employer welfare arrangement;
- (2) Coverage and benefits provided under a self-funded qualified multiple employer welfare arrangement are not protected by the Tennessee Life and Health Insurance Guaranty Association; and
- (3) If the self-funded qualified multiple employer welfare arrangement does not pay expenses that are eligible for payment under the plan for any reason, the employer or employee covered by the plan will be responsible for the payment of those expenses.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.11 Examinations and Investigations.

- (1) The Commissioner has the authority to examine the affairs of any self-funded qualified multiple employer welfare arrangement that has applied for or received a certificate of authority under this Chapter in order to determine the financial condition of the arrangement or to determine whether the arrangement is in compliance with all insurance laws applicable to it. Such examinations shall be conducted at least once every five (5) years, and all expenses of such examinations shall be assessed against the arrangement.
- (2) The Commissioner has the authority to investigate the affairs of any person acting as a multiple employer welfare arrangement, or any person associated or affiliated with a multiple employer welfare arrangement, that offers or proposes to offer health benefits in this State in order to determine whether such person is in violation of the Tennessee Insurance Law or this Chapter.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.12 Licensing of Agents.

- (1) Any person soliciting membership in a self-insurance multiple employer welfare arrangement must be licensed by the Commissioner as an insurance producer in the line of accident and health insurance in order to do so.
- (2) No person shall solicit membership in a self-insurance multiple employer welfare arrangement unless the arrangement has obtained a certificate of authority from the Commissioner pursuant to the terms of this Chapter.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.13 Taxes.

The tax imposed on a self-funded qualified multiple employer welfare arrangement shall be the same amount imposed upon accident and health insurers under Tenn. Code Ann. § 56-4-205.

Authority: Tenn. Code Ann. § 56-26-204(b) and (c).

Rule 0780-1-76-.14 Misrepresentation Prohibited.

No person shall make a material misrepresentation or omit to state a material fact in connection with the offering of health benefits by a self-funded qualified multiple employer welfare arrangement to members of a trade or professional association, or of a non-profit business coalition for health.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.15 Prohibited Use of Certain Names.

A self-funded qualified multiple employer welfare arrangement may not use a name that includes the words “insurance,” “casualty,” “surety,” “health and accident,” “mutual,” or other terms descriptive of an insurer or insurance business. A self-funded qualified multiple employer welfare arrangement may not have or use a name that is the same as or so similar to that of another self-funded qualified multiple employer welfare arrangement or insurer that the name is likely to mislead the public.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.16 Applicability of Other Provisions.

- (1) In addition to the provisions contained or referred to in this chapter, the following chapters and provisions of Title 56 also apply with respect to self-funded qualified multiple employer welfare arrangements to the extent applicable:
 - (a) Tenn. Code Ann. Title 56, Chapter 7 to the extent the sections contained therein apply to health and accident insurers; and
 - (b) Tenn. Code Ann. Title 56, Chapter 26, Part 1.

Authority: Tenn. Code Ann. § 56-26-204(b).

0780-1-76-.17 Exemptions.

An arrangement that is licensed by the Commissioner as a staff leasing company and has received approval from the Commissioner of its plan for self-insuring health benefits pursuant to the provisions of Tenn. Code Ann. § 62-43-113(d) and the guidelines established thereunder shall be exempt from the requirements of this Chapter.

Authority: Tenn. Code Ann. §§ 56-26-204(b), 62-43-104(a) and 62-43-113(d).

Rule 0780-1-76-.18 Cease and Desist Orders.

- (1) Except as otherwise provided in paragraph (2) of this rule, after notice and opportunity for a hearing, the Commissioner may issue an order requiring a self-funded qualified multiple employer welfare arrangement to cease and desist from engaging in any act or practice found to be in violation of any applicable statute or provision under the Tennessee Insurance Law, this Chapter, or any order of the Commissioner.
- (2) Whenever the Commissioner determines that a self-funded qualified multiple employer welfare arrangement has been established or maintained in this State in violation of Rule 0780-1-76-.03, the Commissioner may issue a cease and desist order ex parte and without prior notice being given to the arrangement;

provided, however, that the Commissioner shall provide the arrangement notice and the opportunity for hearing to challenge the issuance of the cease and desist order.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.19 Penalties.

- (1) After notice and an opportunity for a hearing, the Commissioner may revoke or suspend a self-funded qualified multiple employer welfare arrangement's certificate of authority upon a finding that:
 - (a) The arrangement is in a hazardous financial condition;
 - (b) The arrangement fails to pay any premium tax, regulatory fee or assessment, or special fund contribution imposed upon the arrangement at the time when such obligations are owed;
 - (c) The arrangement fails to cooperate in any examination or investigation initiated by the Commissioner pursuant to Rule 0780-1-76-.11.
 - (d) The arrangement fails to comply with any of the provisions of this rule, or with any lawful order of the Commissioner, including those issued pursuant to Rule 0780-1-76-.18, within the time prescribed;
 - (e) The arrangement fraudulently obtained its certificate of authority;
 - (f) The arrangement made a misrepresentation in the application for the certificate of authority; or
 - (g) The arrangement has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise in its fiduciary capacities.
- (2) With respect to any arrangement licensed or required to be licensed under this Chapter, and in addition to or in lieu of any action taken in Rule 0780-1-76-.18 or paragraph (1) of this rule, the Commissioner may assess a civil penalty against such arrangement in an amount not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each separate violation of a statute or rule applicable to the arrangement. Each day of continued violation constitutes a separate violation.

Authority: Tenn. Code Ann. § 56-26-204(b).

Rule 0780-1-76-.20 Applicability of the Insurers Rehabilitation and Liquidation Act.

The proceedings authorized by Title 56, Chapter 9 may be applied to self-funded qualified multiple employer welfare arrangements. A self-funded qualified multiple employer welfare arrangement established or maintained in this State shall be included in the definition of the term "insurer" found in Tenn. Code Ann. § 56-9-103(12) for all such purposes.

Authority: Tenn. Code Ann. § 56-26-204(b).

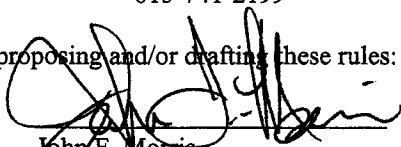
Legal contact and/or party who will approve final copy for publication:

John F. Morris
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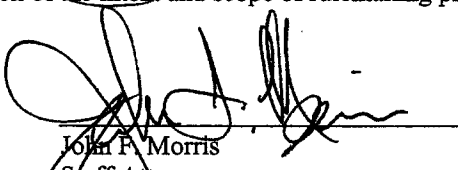
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Signature of the agency or officers directly responsible for proposing and/or drafting these rules:


John F. Morris
Staff Attorney

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Commissioner of Commerce and Insurance.


John F. Morris
Staff Attorney
Tennessee Department of
Commerce and Insurance

Subscribed and sworn to before me this the 31st day of January, 2003.


Notary Public

My commission expires on the 30th day of May, 2005.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31 day of January, 2003.


Riley C. Darnell

REC-10

2003 JAN 31 PM 3:00

SECURITY